

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALI ALGHAZALI,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC.

Defendant.

Case No. 1:23-cv-01427-CDB

SCHEDULING ORDER (Fed. R. Civ. P. 16)

Discovery Deadlines:

- Amend Pleadings: February 20, 2024
- Rule 26 Disclosures: January 19, 2024
- Expert Disclosures: July 5, 2024
- Rebuttal Expert Disclosures: August 2, 2024
- Fact Discovery: June 21, 2024
- Expert Discovery: September 6, 2024
- Mid-Discovery Status Conference: May 3, 2024, at 10:00 a.m., in Bakersfield Federal Courthouse 510 19th Street, Bakersfield, CA 93301

Non-Dispositive Motion Deadlines:

- Filing: September 20, 2024
- Hearing: On or before October 25, 2024, at 10:30 a.m., in Bakersfield Federal Courthouse

Dispositive Motion Deadlines:

- Filing: November 22, 2024
- Hearing: On or before January 3, 2025, at 1:30 p.m., in Bakersfield Federal Courthouse

Pre-Trial Conference: January 17, 2025, at 10:30 a.m., in Bakersfield Federal Courthouse

Trial: March 10, 2025, at 8:30 a.m., in Bakersfield Federal Courthouse

This action was removed from Kern County Superior Court on September 29, 2023. (Doc. 1). Plaintiff Ali Alghazali (“Plaintiff”) raises claims against Defendant Nissan North America, Inc. (“Defendant”) for violations of the Song-Beverley Act, the Magnuson-Moss Act, and for breach of express warranty. (Doc. 1-2). On December 20, 2023, the Court convened with the parties via Zoom videoconference for a scheduling conference. Timothy Michael Whelan appeared on behalf of Plaintiff; Naoki S. Kaneko appeared on behalf of Defendant.

I. Fictitiously-Named Defendants

All claims as to “Doe” Defendants, including any counterclaims and cross-claims, are hereby **Dismissed**.

II. Pleading Amendment

Any motions to amend the pleadings must be filed by **February 20, 2024**. The parties should not construe a timely filing of a motion or stipulation requesting leave to amend the pleadings to necessarily constitute good cause to modify the existing schedule, if necessary. All proposed amendments must (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or (4) futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

III. Discovery Plan and Cut-Off Date

The parties are ordered to exchange their initial disclosures required by Fed. R. Civ. P. 26(a)(1) by **January 19, 2024**.

The parties are ordered to complete all discovery pertaining to non-experts on or before **June 21, 2024**, and all discovery pertaining to experts on or before **September 6, 2024**.

The parties are directed to disclose all expert witnesses, in writing, on or before **July 5, 2024**, and to disclose all rebuttal experts on or before **August 2, 2024**. The written designation of retained and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and shall include all information required thereunder. Failure to designate experts in compliance with this

1 order may result in the Court excluding the testimony or other evidence offered through such experts
2 that are not disclosed pursuant to this order.

3 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
4 experts and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
5 included in the designation. Failure to comply may result in the imposition of sanctions, which may
6 include striking the expert designation and preclusion of expert testimony.

7 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
8 disclosures and responses to discovery requests will be strictly enforced.

9 A mid-discovery status conference is scheduled for **May 3, 2024**, at 10:00 a.m. before
10 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference
11 report no later than **one week before the conference**. Counsel also SHALL lodge the status report via
12 e-mail to CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery
13 counsel have completed and that which needs to be completed as well as any impediments to
14 completing the discovery within the deadlines set forth in this order. Counsel SHALL discuss
15 settlement and certify in the joint status report (1) that they have met/conferred regarding settlement,
16 and (2) proposed dates for convening a settlement conference with an unassigned magistrate judge.

17 **IV. Pre-Trial Motion Schedule / Informal Discovery Dispute Conferences**

18 All non-dispositive pre-trial motions, including any discovery motions, shall be filed by
19 **September 20, 2024**¹ and heard on or before **October 25, 2024**. For these hearings and at the
20 direction of the Courtroom Deputy Clerk, the Court may direct counsel to appear remotely (via
21 Zoom). For hearings noticed to occur in-person, the Court may permit counsel to appear remotely (via
22 Zoom) provided the Courtroom Deputy Clerk receives a written notice of the request to appear
23 remotely no later than five court days before the noticed hearing date.

24 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
25 filed at least three days before the first deadline the parties wish to extend.

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¹ Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable
time of discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert
discovery deadline.

No written discovery motions shall be filed without the prior approval of Judge Baker. A party with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the requesting party promptly shall seek a conference with all involved parties and Judge Baker. To schedule this conference, the parties should contact the Courtroom Deputy Clerk, Susan Hall, at (661) 326-6620 or via email at SHall@caed.uscourts.gov. At least two days before the conference, counsel SHALL file a joint, informal letter brief detailing each party's position. Each party's narrative shall not exceed three pages, excluding exhibits. At the commencement of the conference, if the parties jointly agree to Judge Baker's consideration and resolution of the discovery disputes outside the formal Local Rule 251 procedures, the Court will entertain arguments by the parties and issue a ruling. If the parties do not jointly agree to the informal discovery dispute resolution procedures set forth herein, the requesting party may then seek relief through motion to compel. Counsel must comply with Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice and dropped from the Court's calendar.

All dispositive pre-trial motions shall be filed no later than **November 22, 2024**, and heard on or before **January 3, 2025**. Motions are heard before Judge Baker at 10:30 a.m., at the United States District Courthouse, 510 19th Street, Bakersfield, CA.

V. Motions for Summary Judgment or Summary Adjudication

At least 21 days before filing a motion for summary judgment or motion for summary adjudication, the parties SHALL meet, in person or by telephone, to confer about the issues to be raised in the motion.

The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the issues for review by the court; 5) explore the possibility of settlement before the parties incur the expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

The moving party SHALL initiate the meeting and SHALL provide a complete, proposed statement of undisputed facts **at least five days before** the conference. The finalized joint statement

1 of undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be
2 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
3 statement of undisputed facts.

4 In the notice of motion, the moving party SHALL certify that the parties have met and
5 conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer.
6 Failure to comply may result in the motion being stricken.

7 **VI. Pre-Trial Conference**

8 **January 17, 2025**, at 10:30 a.m., located at the United States District Courthouse, 510 19th
9 Street, Bakersfield, CA, before Judge Baker.

10 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The
11 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly
12 to Judge Baker's chambers, by email at CDBorders@caed.uscourts.gov.

13 Counsels' attention is directed to Rules 281 and 282 of the Local Rules for the Eastern District
14 of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will
15 insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules,
16 the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the Court to
17 explain the nature of the case to the jury during voir dire.

18 **VII. Trial Date**

19 **March 10, 2025**, at 8:30 a.m., located at the United States District Courthouse, 510 19th
20 Street, Bakersfield, CA, before Judge Baker.

21 A. This is a jury trial.

22 B. The parties estimate trial to last 4-7 days.

23 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
24 California, Rule 285.

25 **VIII. Settlement Conference**

26 The parties SHALL meet and confer and notify the Court prior to the Pre-Trial Conference
27 whether they wish to convene a Settlement Conference. In the event the parties request a Settlement
28 Conference, unless otherwise permitted in advance by the Court, the attorneys who will try the case

1 shall appear at the settlement conference **with the parties** and the person or persons having full
2 authority to negotiate and settle the case on any terms² at the conference. Consideration of settlement
3 is a serious matter that requires preparation prior to the settlement conference. Set forth below are the
4 procedures the Court will employ, absent good cause, in conducting the conference.

5 At least twenty-one days before the settlement conference, Plaintiff SHALL submit to
6 Defendant via fax or e-mail, a written itemization of damages and a meaningful³ settlement demand
7 which includes a brief explanation of why such a settlement is appropriate. Thereafter, no later than
8 fourteen days before the settlement conference, Defendant SHALL respond, via fax or e-mail, with an
9 acceptance of the offer or with a meaningful counteroffer which includes a brief explanation of why
10 such a settlement is appropriate.

11 If settlement is not achieved, each party SHALL attach copies of their settlement offers to their
12 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
13 not be filed on the court docket.

14 CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

15 At least five court days prior to the settlement conference, the parties shall submit a
16 Confidential Settlement Conference Statement via email directly to the chambers of the unassigned
17 magistrate judge referred to the settlement conference. The statement should not be filed with the
18 Clerk of the Court nor served on any other party, although the parties may file a Notice of Lodging of
19 Settlement Conference Statement. Each statement shall be clearly marked "confidential" with the date
20 and time of the settlement conference indicated prominently thereon.

21 The Confidential Settlement Conference Statement shall include the following:
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24 ² Insurance carriers, business organizations, and governmental bodies or agencies whose settlement
25 agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like
26 shall be represented by a person or persons who occupy high executive positions in the party organization and
who will be directly involved in the process of approval of any settlement offers or agreements. To the extent
possible, the representative shall have authority, if he or she deems it appropriate, to settle the action on terms
consistent with the opposing party's most recent demand.

27 ³ "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to the
28 offering party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to
the other party. If, however, the offering party is only willing to offer a settlement which it knows the other party
will not accept, this should trigger a recognition the case is not in a settlement posture and the parties should
confer about continuing or vacating the settlement conference via stipulation.

- 1 A. A brief statement of the facts of the case.
- 2 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon
- 3 which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the
- 4 claims and defenses; and a description of the major issues in dispute.
- 5 C. A summary of the proceedings to date.
- 6 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 7 E. The relief sought.
- 8 F. The party's position on settlement, including present demands and offers and a history
- 9 of past settlement discussions, offers and demands.

10 **IX. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten**

11 **Trial**

12 None.

13 **X. Related Matters Pending**

14 There are no pending related matters.

15 **XI. Compliance with Federal Procedure**

16 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure

17 and the Local Rules of the Eastern District of California, and to keep abreast of any amendments

18 thereto. The Court requires compliance with these Rules to efficiently handle its increasing case load.

19 **XII. Effect of this Order**

20 The foregoing order represents the best estimate of the court and counsel as to the agenda most

21 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the

22 parties determine at any time that the schedule outlined in this order cannot be met, counsel are

23 ordered to notify the court immediately of that fact so that adjustments may be made, either by

24 stipulation or by subsequent status conference.

25 **The dates set in this Order are considered to be firm and will not be modified absent a**

26 **showing of good cause even if the request to modify is made by stipulation. Stipulations**

27 **extending the deadlines contained herein will not be considered unless they are accompanied by**

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1 affidavits or declarations, and where appropriate attached exhibits, which establish good cause
2 for granting the relief requested.

3 Failure to comply with this order may result in the imposition of sanctions.

4 IT IS SO ORDERED.

5 Dated: December 21, 2023

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UNITED STATES MAGISTRATE JUDGE